

March 7, 2017

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123; *Structure and Practices of the Video Relay Service Program*, CG Docket No. 10-51

Dear Ms. Dortch:

On March 6, 2017, Scott Wood and Paul Kershisnik of Sorenson Communications, LLC (“Sorenson”), Rebekah Goodheart of Jenner & Block, outside counsel to Sorenson, and I, outside counsel to Sorenson, met with Amy Bender, Legal Advisor to Commissioner O’Rielly, regarding the Order and Further Notice of Proposed Rulemaking (“FNPRM”) tentatively scheduled for consideration at the Commission’s meeting on March 23, 2017. We noted that we appreciated the transparency created by the publication of the draft Order and FNPRM, and the opportunity to address both matters of agreement and of concern with specificity.

Sorenson is pleased that the FCC is moving forward with an FNPRM to provide certainty and stability with regard to VRS rates but believes that the FNPRM misses an opportunity to seek comment on alternative, less regulatory approaches. In addition, Sorenson is concerned that the FNPRM does not ask questions to test key assumptions and potentially could be read to preclude consideration of more efficient and less regulatory approaches, all while seeking additional services at additional cost to VRS providers. While the draft acknowledges a balance between efficiency and competition, it should also seek comment on whether it remains appropriate to pay for inefficient providers after a decade of tiered rates.

To extent the Commission wants to set the most efficient rates and send the appropriate pricing signals, Sorenson urges the Commission to seek comment on alternative frameworks that would do so. Foremost, Sorenson encouraged the Commission to seek comment on market-based alternatives, which a unanimous Commission committed to do in 2013.¹ A market-based approach reduces regulation and Commission oversight and should not be abandoned. Attached is an outline of a new proposal on a market-based approach, and we ask that it be included in the

¹ See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-84, 28 FCC Rcd. 8618, 8706-07 ¶ 217 (2014).

scope of the NPRM.² Sorenson's proposal is patterned after auctions run by the Federal Energy Regulatory Commission.

Even if the Commission does not pursue a market-based path, a price cap system based on the costs of an efficient provider's end-to-end service, with a reasonable after-tax margin, would be a less regulatory alternative that still protects the TRS Fund ratepayers. The Commission long ago recognized the benefits of price caps over rate-of-return regulation, and has incorporated incentive-based mechanisms into its universal service programs.³ A more complete description of such a mechanism is attached, and we respectfully ask that it also be considered as part of the FNPRM.⁴ The current system requires artificial line drawing between certain allowed costs and other costs that are historically disallowed but necessary for consumers to be able to utilize VRS. For example, disallowed costs today include 911 fees paid to number providers, costs to develop, maintain and upgrade the end user access devices (whether hardware or software-based) necessary to utilize VRS, customer support for end user devices, and outreach. The Commission should be evaluating ways to move away from such heavy regulation that necessitates making these distinctions in favor of a lighter touch regulation. The draft currently would permanently foreclose consideration of these additional costs, no matter how necessary or reasonable, because n.237 expressly precludes any reexamination of the costs that should be considered in evaluating and establishing rates. We urged that n.237 be removed so as to permit a fuller review and consideration of rate alternatives.

² See Attachment A.

³ See, e.g., *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Inter-carrier Compensation Regime*, FCC 16-33, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 3087, 3090-91 ¶ 4 (2016) (adopting a voluntary, model-based support mechanism for rate-of-return carriers that "advance[s] the Commission's longstanding objective of adopting fiscally responsible, accountable and incentive-based policies to replace outdated rules and programs"); *Policy and Rules Concerning Rates for Dominant Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, FCC 89-91, 4 FCC Rcd. 2873, 2893 ¶ 36 (1989) ("The attractiveness of incentive regulation lies in its ability to replicate more accurately than rate of return the dynamic, consumer-oriented process that characterizes a competitive market. In general, such regulation operates by placing limits on the rates carriers may charge for services. In the face of such constraints, a carrier's primary means of increasing earnings are to enhance its efficiency and innovate in the provision of service. . . . The system also is less complex than rate of return regulation and easier to administer in the long run, which should reduce the cost of regulation.").

⁴ See Attachment B.

Moreover, limiting the FNPRM only to those costs historically defined as “allowable” will be in tension with Congress’ direction in Section 225(d)(2), which states:

The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 157(a) of this title, the use of existing technology and do not discourage or impair the development of improved technology.

Sorenson has made every effort to reduce costs and be more efficient,⁵ but excluding end user access device costs and other necessary but disallowed costs such as 911 fees while, at the same time, further reducing rates puts in jeopardy our ability to comply with this statutory mandate and provide functional equivalent service. Indeed, the majority of the costs of operating VRS are the labor costs of interpreters, and such costs cannot be reduced absent reductions in quality.

The Commission should adopt rules that reduce regulation while encouraging innovation and quality service to deaf consumers and their families. Yet, as proposed in the FNPRM, the distinction between allowed and disallowed costs can discourage consumer-friendly innovations. Moreover, investment in improved videophones is not an unnecessary luxury. Improved video quality—such as moving from 480p to 720p and 1080p—makes VRS more usable, as ASL speakers can more easily discern the signs. Sorenson’s phones are now capable of supporting ASL conferencing, and provide Bluetooth connectivity and SIP interoperability. Sorenson has also introduced other consumer features such as Block Anonymous Calls as a feature for all users to prevent unwanted calls such as robocalls, and created a Block Caller ID feature, which provides a critical and equivalent feature that allows domestic violence victims and institutions such as women’s shelters to safely make calls. Sorenson has also integrated support for Real-Time Text into its videophones. Not including a reasonable allowance for these costs in setting VRS rates will necessarily “discourage or impair the development of improved technology.”⁶

The Commission should also be mindful of the implications that these proposals will have on consumers. Requiring VRS users to pay the full cost of access technology, which is the implication of excluding these costs from consideration, would not be consistent with Congress’ direction that “users of telecommunications relay service pay rates no greater than the rates paid for functionally equivalent voice communications services.”⁷ A price cap that supports end-to-end service, including access devices, with a reasonable after-tax margin would avoid the distortive effects of micromanagement through defining allowable costs, while at the same time protecting TRS ratepayers.

With respect to the specific rate proposals in the draft FNPRM, Sorenson encouraged the Commission to ask additional questions to evaluate whether the current tiered structure is the

⁵ Sorenson and has made a concerted effort to reduce costs (including debt and debt service) while also investing in technologies to provide innovative, high quality services to the deaf community and to support the changes mandated by the Commission.

⁶ 47 U.S.C. § 225(d)(2).

⁷ Id. § 225(d)(1)(D).

right approach. The draft does not test the assumption that certain providers costs are higher due to economies of scale, that there remain (and will continue for the four-year period) structural barriers to less efficient providers' expansion of market share other than their own marketplace deficiencies, and that tiers are not themselves enabling inefficient operation or unwanted behavior. To allow a fuller exploration of these assumptions, we urge the FCC to ask questions to enable the agency to evaluate the following questions:

- Are smaller providers' higher costs all related to economies of scale, rather than inefficiencies?
- What structural impediments to achieving scale operations remain, and over what time period should they be expected to continue? Is the lack of implementation of the neutral communications platform really a reason why high-cost providers could not reduce costs? Although the draft cites the fact that the neutral communications platform envisioned by the *2013 Order* has not been developed, providers have stated they no longer intend to use the neutral platform.⁸ Similarly, all providers have told the FCC, "Competition has driven provider-distributed endpoints to contain a much richer set of functionality and features than are specified by the RUE Profile," which casts significant doubt as to whether the absence of the RUE beyond its existing Windows-based prototype is a significant structural impediment to expansion.⁹
- Are tiered rates leading to perverse incentives? The draft does not ask whether tiered rates could lead to higher costs or unwanted behavior. The Commission should understand the implications of these tiered rates because ratepayers that contribute to the fund are ultimately bearing the costs of any inefficiencies.
- Is it the right policy to effectively penalize the most efficient provider by substantially cutting rates for that provider, while maintaining higher rates for higher cost providers?
- How does the choice to pay average per minute compensation to higher cost providers align with the Commission's policy only to support one provider, where necessary, in high-cost areas for universal service purposes?

As the draft FNPRM recognizes with respect to rates, the Commission's past actions have proved to be successful in reducing overall VRS compensation, and have significantly reduced compensation rates from where they stood in 2010. As the Commission charts a path forward for the next four years, it is important to consider a full range of alternatives, and assess the

⁸ See, e.g., Letter from S. Belanger to M. Dortch, CG Docket Nos. 10-51 & 03-123 (filed Nov. 25, 2014) ("ZVRS Letter"); Convo (@convorelay), Twitter (Apr. 9, 2014, 12:43 PM), <https://twitter.com/convorelay/status/453981489940549633>; see also Purple Communications, *Purple's Perspective on Neutral Platform*, DSTidbits (May 2014), <http://dstidbit.blogspot.com/2014/05/purples-perspective-on-neutral-platform.html>.

⁹ Letter from ASL Global VRS, Convo, CSDVRS, Purple, and Sorenson, to Marlene H. Dortch, Secretary, FCC, at 2-3, CG Docket Nos. 10-51 & 03-123 (filed Oct. 31, 2016).

Ms. Marlene H. Dortch

March 7, 2017

Page 5 of 5

likely outcomes of each path, including especially the impact on VRS consumers and the continued evolution of the services available to them as technology and voice telecommunications continue to change.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata".

John T. Nakahata

Counsel to Sorenson Communications, LLC

cc: Amy Bender
Nick Degani
Zenji Nakazawa
Claude Aiken

Karen Peltz Strauss
Bob Aldrich
Eliot Greenwald

Attachments

Attachment A

A PROPOSAL FOR A RATIONAL AUCTION TO ESTABLISH MARKET-BASED COMPENSATION

Auction Proposal

- A market-based approach should not be foreclosed and should be part of this NPRM.
- Sorenson's auction proposal is modeled on auctions conducted by FERC rather than the proposal in the 2013 FNPRM.
 - A concern with the 2013 auction proposal is that it would have significantly interfered with consumers' ability to choose their VRS provider because the proposal would have auctioned the right to provide minutes of use inbound to particular destinations, such as the Social Security Administration or a wireless carrier.
- Instead of auctioning the right to provide a specified number of minutes of use, we propose to auction the right to continue to receive compensation from the TRS Fund.
 - The Commission would first need to decide how many providers are necessary to ensure adequate competitive choices to consumers.
 - The auction would consist of VRS providers making bids for the lowest price at which they are willing to provide service.
 - To ensure that functionally equivalent service will be provided, the Commission should set a floor on the bid price.
 - If the Commission determined that three providers were necessary to offer a competitive choice, the rate would be the amount bid by the third-lowest bidder. Because the right to receive compensation is at stake, providers would have a strong incentive to bid as low as they can.
 - Sorenson is willing to be a price taker—that is, Sorenson is willing to bid \$0.
 - Hypothetical example (illustrative only): If the floor rate were \$3.30 and
 - Sorenson bid \$0,
 - A bid \$3.50,
 - B bid \$3.60,
 - C bid \$3.70, and
 - D bid \$3.80,
 - the unitary rate would be \$3.60. A, B, and Sorenson would be permitted to obtain reimbursement from the Fund, and C and D would not.
 - A provider could ensure that it can continue to provide service by bidding the floor rate.
- The winning rate would then be used to initialize a price cap that would be adjusted annually for inflation and productivity gains.
 - The price cap regime should be in effect for five to ten years.
- Using an auction to set a VRS price cap would offer three main benefits:
 - First, the auction would increase competition and efficiency in the market.
 - Second, a price-cap auction would provide stability by establishing a unitary rate, which would encourage VRS providers to invest in long-term growth.

- Third, a price-cap auction would strike the right balance between promoting competition and preserving consumer choice.
- Fourth, by using an auction mechanism, the Commission gets out of the business of defining compensable and non-compensable elements and detailed cost reporting, while at the same timing allowing providers the flexibility to tailor their services to consumers' needs.

Attachment B

PROPOSAL FOR AN EFFICIENT PROVIDER END-TO-END VRS RATE

- VRS allowable costs have divided between service and user devices. However, the service is not usable without some user access device, either hardware or software-based.
- Mandatory changes, such as to implement the SIP standard, have required changes to end user access devices. Moreover, changes such as support for improved video quality or mobile environments increase the usability of VRS.
- In Section 225(d)(2), Congress directs: “The Commission shall ensure that regulations prescribed to implement this section encourage, consistent with section 157(a) of this title, the use of existing technology and do not discourage or impair the development of improved technology.”
- VRS users need technical and customer service support, including field support, in configuring and maintaining their necessary access devices.
- The Commission, through its project in creating the ACE prototype, has experience that access point creation is not easy and can be costly. Moreover, this is the type of development that is best carried on in the private sector, which creates incentives to innovate.
- An end-to-end VRS rate would include both costs of efficient service and a reasonable allowance for an end user access device, along with a commercially reasonable after-tax margin that would encourage continued investment.
 - This also should include other costs, such as 911 fees, numbers and outreach.
- Setting a price cap on this basis would recognize the reality that VRS does not exist without an access device, and stabilize and simplify VRS rates and cost reporting.
 - This recognizes that with complex IP-based devices or software, customer support for device installation and configuration is critical to being able successfully to use the service.
 - This eliminates the need to separate between device and service costs.
 - A price cap would both incent efficient behavior, and not require the Commission to police the distinction between development, maintenance and support costs to meet mandatory minimum standards, to improve services above mandatory minimum standards, and to provide additional features. It is better to set a reasonable compensation amount for the service and access device, with a price cap to ensure continue efficiencies.
- Because VRS consumers must purchase broadband in order to use VRS, this approach is consistent with Congress’ direction in Section 225 (d)(1)(D) that “users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services.”